

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RAUL A. GARIBAY,

No. C 07-05338 CW (PR)

Petitioner,

ORDER OF DISMISSAL

v.

JOHN MARSHALL, Warden,

Respondent.

Petitioner, a state prisoner, filed this pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 and an application for leave to proceed in forma pauperis (IFP). Petitioner has filed a previous petition for a writ of habeas corpus with this Court, challenging the same conviction and sentence. See Case No. C 03-1808 CW (PR). The Court denied the first petition on the merits.

DISCUSSION

The Court finds the present petition is a second or successive petition attacking the same conviction and sentence as Petitioner's prior federal habeas petition. A second or successive petition containing new claims may not be filed in the district court unless Petitioner first obtains from the United States Court of Appeals an order authorizing the district court to consider the petition. 28 U.S.C. § 2244(b)(3)(A). Petitioner has not done so. Accordingly, this petition is DISMISSED without prejudice to filing a new habeas action if Petitioner obtains the necessary order.

CONCLUSION

For the foregoing reasons, the petition is DISMISSED pursuant to 28 U.S.C. § 2244(b). Based solely on Petitioner's lack of financial resources, his application to proceed IFP (docket no. 2) is GRANTED.

The Clerk of the Court shall enter judgment in accordance with this Order, terminate all other pending motions, and close the file.

IT IS SO ORDERED.

Dated: 2/7/08



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

RAUL A. GARIBAY,
Plaintiff,

Case Number: CV07-05338 CW

CERTIFICATE OF SERVICE

v.

JOHN MARSHALL et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on February 7, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Raul A. Garibay
P98953
CMC - West, U1-D4-33U
P.O. Box 8103
San Luis Obispo, CA 93403

Dated: February 7, 2008

Richard W. Wieking, Clerk
By: Sheilah Cahill, Deputy Clerk